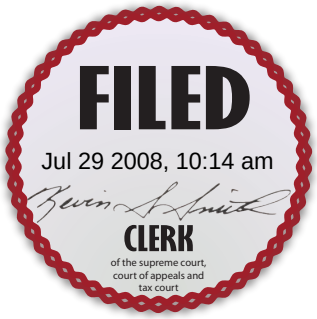

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IN THE
COURT OF APPEALS OF INDIANA

ANGEL MERIDA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0712-CR-713
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Master Commissioner[1]
The Honorable Barbara A. Collins, Judge
Cause No.49F08-0709-CM-186108

[1] Master Commissioner Jeffrey Marchal heard this case and signed the abstract of judgment. Indiana Code section 33-33-49-16(e) provides that a "master commissioner shall report the findings in each of the matters before the master commissioner in writing to the judge or judges of the division to which the master commissioner is assigned." However, section 33-33-49-16(e) also provides that master commissioners have the powers prescribed for magistrates pursuant to Indiana Code section 33-23-5-5, including the power to enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense. Given the manner in which the statutes defining the powers of these judicial officers have evolved, and in conjunction with the powers specifically granted by section 33-23-5-5, we believe section 33-33-49-16(e) means that the master commissioner has to keep the regular judge apprised regarding the matters before him and not that the regular judge needs to approve by signature actions the master commissioner is authorized by section 33-23-5-5 to take.

July 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, Angel Merida appeals his conviction of operating a vehicle while intoxicated ("OWI"), a Class A misdemeanor, and failure to stop after an accident causing personal injury, a Class A misdemeanor. Merida raises the sole issue of whether sufficient evidence supports his convictions. Concluding sufficient evidence exists, we affirm.

Facts and Procedural History

On September 9, 2007, Officer Joseph Kramer, of the Speedway Police Department, received a dispatch regarding a personal injury accident on Georgetown Road in Speedway. On his way to the accident, Officer Kramer received a report that the suspected driver involved in the accident was fleeing on foot. Officer Kramer came upon Merida, who had blood on his head and hands and was walking briskly away from the accident. Officer Kramer pointed a spotlight on Merida and ordered him to stop. After determining that Merida did not speak English, Officer Kramer called Officer Robert Fekkes, a Spanish-speaking Officer with the Speedway Police Department. Officer Fekkes testified that while speaking to Merida he noticed a "strong odor of an alcoholic

beverage, slurred speech, red watery eyes and blood coming from the right side of his head." Transcript at 27. Merida told Officer Fekkes that "he was in an accident," and "that he ran from the accident to retrieve help." Id. at 29. Officer Fekkes administered the Horizontal Gaze Nystagumus test, which Merida failed. Officer Fekkes then obtained Merida's consent for a blood draw, followed Merida to the hospital, observed a nurse draw blood from Merida, took possession of two vials of Merida's blood, and transported the vials to the police laboratory for testing. At trial, the State introduced the test's results, which indicated Merida's blood alcohol concentration was .15 percent.

Officer Michael Clupper, also of the Speedway Police Department, was also dispatched to the accident scene. When he arrived at the scene, he observed a car that appeared to have been in an accident sitting in a field to the west of a damaged utility pole. Officer Clupper found Jesus Mendez sitting in the front passenger seat of the vehicle. Mendez "was seated with his bottom on the seat; his head was leaned up against the what we call the B-pillow, which is the pillow behind the door and his feet were draped on the . . . center console of the car." Id. at 42. Emergency personnel were unable to open either door, and the jaws of life were used to pry the passenger door and roof off the vehicle.

On September 11, 2007, the State charged Merida with public intoxication, failure to stop after an accident causing personal injury, and OWI. On October 1 and 15, 2007, the trial court held a bench trial. At this trial, the State called James Burdge, who was working in his capacity as a "trouble man" for Indianapolis Power and Light on the morning of the accident. Burdge was sitting at an intersection when he saw Merida

running northbound on Georgetown Road. Burdge "noticed [Merida] continually looking over his shoulder." Id. at 8. Burdge drove past Merida a total of three times in order to determine what he looked like, and then proceeded to the scene of the accident to tell police officers that he had seen a man running away from the location of the accident. Burdge testified that Merida did not acknowledge him any of the times he passed him. Burdge also testified that he observed Mendez sitting in the passenger seat. The responding police officers testified to the facts as stated above. Merida took the stand and testified that he had been a passenger in the vehicle, and that Mendez was the driver. He testified that he fled the scene to get help. The trial court found Merida guilty of failure to stop after an accident causing personal injury and OWI and sentenced him to consecutive sentences of 120 days of home detention. Merida now appeals his convictions.

Discussion and Decision

I. Standard of Review

When reviewing a claim of insufficient evidence, we will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

Our supreme court has recently summarized our standard of review when assessing claims of insufficient evidence.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable

> inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

II. Sufficiency of the Evidence

Merida argues that insufficient evidence exists to support a finding that he was the driver of the vehicle. Specifically, he argues that the evidence is insufficient because no witness testified that he saw Merida driving the vehicle.

In order to support convictions of OWI and leaving the scene of an accident resulting in personal injury, the State must prove beyond a reasonable doubt that Merida operated the vehicle. See Loyd v. State, 787 N.E.2d 953, 958 (Ind. Ct. App. 2003) (leaving the scene of an accident resulting in personal injury); Pickens v. State, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001) (OWI).

Merida argues that because no witness actually saw him driving the vehicle, his convictions cannot stand. However, circumstantial evidence may serve to support Merida's convictions. See Jellison v. State, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995) (concluding that sufficient circumstantial evidence supported a finding that the defendant had operated a vehicle). The fact that no one observed Merida driving the vehicle does not preclude his convictions. Cf. Stoltmann v. State, 793 N.E.2d 275, 279 (Ind. Ct. App.

2003) (concluding sufficient evidence supported finding that defendant had operated a vehicle where officer came upon a vehicle and observed a person in the front passenger seat, the defendant urinate behind vehicle, and the defendant attempt to enter the vehicle through the rear driver's side door), trans. denied.

Burdge and Office Clupper testified that when they approached the vehicle, they found Mendez sitting in the passenger's seat, unable to exit the vehicle. Such evidence supports a finding that Mendez was a passenger and Merida had been driving at the time of the accident. Cf. Spaulding v. State, 533 N.E.2d 597, 601 (Ind. Ct. App. 1989) ("While the evidence of the location of the car's occupants after impact certainly is not conclusive, it is circumstantial evidence tending to show that [the defendant] was in the driver's seat at the time of the collision as he told persons at the scene and later in the hospital."), trans. denied; Geyer v. State, 531 N.E.2d 235, 237 (Ind. Ct. App. 1988) ("The evidence that [the defendant] was found pinned behind the wheel of the crashed automobile supports the reasonable fact finder's conclusion, beyond a reasonable doubt, that [the defendant] was operating the vehicle at the time of the accident."), trans. denied.

Further, Merida was apprehended while fleeing the scene of the accident. Merida's flight provides further circumstantial evidence of his guilt. See Gee v. State, 526 N.E.2d 1152, 1154 (Ind. 1988) ("Flight from the scene of a crime may be considered circumstantial evidence of guilt."). Although Merida explained that he left the scene in order to obtain assistance, Office Kramer testified that before he ordered Merida to stop, Merida had not attempted to signal Officer Kramer. Burdge also testified that he drove past Merida three times, and Merida made no attempt to stop him and ask for help. The

trial court was free to disbelieve Merida's self-serving testimony that he was a passenger who left the scene to secure help instead of a driver who left the scene to avoid apprehension. See Custer v. State, 637 N.E.2d 187, 189 (Ind. Ct. App. 1994) (recognizing that although the defendant and his girlfriend testified that the girlfriend, and not the defendant, had driven the vehicle, the trial court "was able to judge the credibility of [the defendant and his girlfriend] and was free to disbelieve them").

We recognize that Merida's version of the events is not impossible. However, our inquiry on appeal is whether the evidence supports the trier of fact's determination; to conclude that insufficient evidence exists here would require us to reweigh the evidence and second-guess the trial court's assessment of the witnesses' credibility. We will not undertake this task on appeal. See Roell v. State, 655 N.E.2d 599, 600-601 (Ind. Ct. App. 1995) (declining the defendant's invitation to reweigh the testimony of the defendant and his girlfriend, who both testified that the girlfriend was the driver, where a police officer testified that the defendant was the driver); Summers v. State, 495 N.E.2d 799, 804 (Ind. Ct. App. 1986) (recognizing that the "jury did not have to believe the testimony of the defense witness that [a person other than the defendant] was driving"), trans. denied.

The evidence indicates that only two people, Merida and Mendez, had been in the vehicle. As explained above, the evidence supports the inference that Mendez had not been driving the vehicle. The combination of these two circumstances supports the inference that Merida was the driver.

Conclusion

We conclude sufficient evidence supports Merida's convictions.

Affirmed.

BAKER, C.J. and RILEY, J., concur.